

United States District Court		District Massachusetts	
Name of Movant Kenneth DeBarros		Prisoner No. 17867-038	Case No. 1:03CR10082-001MLW
Place of Confinement Federal Medical Center Deven, Massachusetts			
UNITED STATES OF AMERICA		V. Kenneth DeBarros (name under which convicted)	
<p style="text-align: center;"><b>MOTION</b></p> <p>1. Name and location of court which entered the judgment of conviction under attack United States District Court for the District of Massachusetts Boston, Massachusetts</p> <p>2. Date of judgment of conviction January 14, 2003</p> <p>3. Length of sentence 33 Months</p> <p>4. Nature of offense involved (all counts) Conspiracy to Distribute Heroin Distribution of Heroin Aiding and Abetting the Distribution of Heroin Aiding and Abetting Distribution of Heroin</p> <p>5. What was your plea? (Check one) (a) Not guilty <input type="checkbox"/> (b) Guilty <input checked="" type="checkbox"/> (c) Nolo contendere <input type="checkbox"/></p> <p>If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:</p> <p>6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input type="checkbox"/> (b) Judge only <input type="checkbox"/></p> <p>7. Did you testify at the trial? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>8. Did you appeal from the judgment of conviction? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>			

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9. If you did appeal, answer the following:

(a) Name of court

(b) Result

(c) Date of result

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court

(2) Nature of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

(6) Date of result

(b) As to any second petition, application or motion give the same information:

(1) Name of court

(2) Name of proceeding

(3) Grounds raised

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

(6) Date of result

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

## A. Ground one:

My constitutional rights pursuant to the sixth and fifth amendments to United States Constitution to be informed of all the charges against me and have facts to be used to increase or enhance my sentence established beyond a reasonable doubt or admitted were violated in the computation of my sentence

Supporting FACTS (state *briefly* without citing cases or law):

pursuant to the sentencing guide lines, At no time was I charged with nor did I admit to the possession of a weapon. I would not have pleaded guilty to such a charge as it was not true. The first time that any mention of a weapon was raised in the Probation Department's Pre Sentence Report. I contested the charge vigorously and demanded a hearing. The government did not offer any witness at the hearing and the court relied upon a written statement that a gun was found in a closet in the house in which I and others resided to make his finding upon a preponderance of the evidence that I possessed and used the weapon in connection with the crimes to which I pleaded guilty. It is my claim that pursuant to the decisions of the United States Supreme Court in Apprendi and Blakely that this finding and any enhancement or increase in my sentence as a result thereof constituted violations of my constitutional protections and that I am entitled to be resentenced based solely upon the crimes to which I pleaded

## B. Ground two:

guilty. Without any enhancement for possession of a weapon. I request the court to take Judicial notice of any further decisions of the Supreme Court made subsequent to the filing of this motion.

Supporting FACTS (state *briefly* without citing cases or law):

## C. Ground three:

Supporting FACTS (state *briefly* without citing cases or law):

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D. Ground four:

Supporting FACTS (state *briefly* without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein: James Sultan One Commercial Whare North Boston, Ma 02110

All Stages of Proceedings

(a) At preliminary hearing

(b) At arraignment and plea

(c) At trial

(d) At sentencing

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(e) On appeal

(f) In any post-conviction proceeding

(g) On appeal from any adverse ruling in a post-conviction proceeding

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

9-29-04

Date

Kenneth DeBarros

Signature of Movant